

auctioneer may withdraw the goods from sale, unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller, or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.

An. Code, 1924, sec. 43. 1912, sec. 43. 1910, ch. 346, sec. 40 (p. 280).

**40.** Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk, whether delivery has been made or not, except that:

(a) Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract, and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

(b) Where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

The situation for which sub-sec. (b) of this section provides is rather for a delay of delivery of goods through fault of either buyer or seller than for such a refusal to accept goods or to pay for them as amounts to a breach of contract. See notes to sec. 38. *Rylance v. Walker Co.*, 129 Md. 484.

This section referred to—see notes to secs. 36 and 37. *Agri. Mfg. Co. v. Atlantic Fertilizer Co.*, 129 Md. 46.

This section referred to in holding that where a railroad company purchased certain pilings under an agreement to inspect the pilings and furnish cars therefor, but failed to do so in a reasonable time, and pilings were swept away by a freshet, railroad company was liable for the ensuing loss. *B. & O. R. R. Co. v. Carter*, 133 Md. 554.

See notes to sec. 38.

An. Code, 1924, sec. 44. 1912, sec. 44. 1910, ch. 346, sec. 41 (p. 280).

**41.** (1) Subject to the provisions of this sub-title, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this sub-title, however, shall affect:

(a) The provisions of any factor's acts recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b) The validity of any contract to sell, or sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction.

This section applied in *Winakur v. Sapourn*, 156 Md. 679.

See notes to sec. 38.